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In the

United States Court of Appeals

For the Seventh Circuit

No. 12099

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

GRANT W. SMITH,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois.

Honorable
John P. Barnes,
Judge Presiding.

Appellant's Brief and Appendix

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UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. **GRANT W. SMITH,** *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois. — Honorable John P. Barnes, Judge Presiding.

Appellant's Brief

STATEMENT OF FACTS.

The March, 1957, Grand Jury returned an indictment against Grant Smith, defendant, in which he was charged in two counts with violation of Section 2422, Title 18, United States Code, commonly described as White Slave Act. Both counts are the same except that they relate to acts which occurred on two dates to-wit: January 31, 1957, and February 28, 1957. The indictment charges that Grant Smith, defendant, knowingly persuaded, induced, enticed and coerced a woman, one Mae Frances Young, also known

as Faye Jackson, to go from Chicago, Illinois, to Waynesville, Missouri, for the purpose of prostitution, debauchery and other immoral purposes, and thereby knowingly caused said woman to go and to be carried and transported as a passenger upon a common carrier in interstate commerce from Chicago, Illinois, to Waynesville, Missouri, in violation of Section 2422, Title 18, United States Code.

The defendant was tried by a jury and was found guilty of the charges contained in the indictment. The victim recanted her testimony in a sworn affidavit which was presented to the court on a motion for a new trial. The motion for a new trial was denied and the defendant was sentenced to the custody of the Attorney General for a period of five years.

Motion challenging the array.

A motion was made prior to the trial challenging the array of the petit jury. Roy Johnson, Clerk of the United States District Court testified that he selects one half of those chosen to serve as jurors; that fifty to sixty percent of all jurors he selected were either recommended by postmasters and former jurors or were volunteers (R. 52); and that some were recommended by the United States Attorney (R. 37). The balance of the jurors he selected were taken from lists of parents of pupils in a parochial school, a parent-teacher association list prepared by his wife, and a list submitted to him by his secretary (R. 48, 49). He further testified that during the year 1956 he communicated with only three Negro churches and some postmasters to secure names for jury service (R. 52). During the year 1957 up to the drawing of the panel for this case on May 15th, he wrote to only a few Negro organizations, mostly churches, to furnish him with names for jury service. (R. 58).

He estimated that he received several thousand questionnaires in 1956. He deposited in the jury box on May 9th, 1956, 606 names, on November 14th, 1956, 788 names; on April 8, 1957, 450 names and on May 8th, 1957, 514. On May 15th, 1957, when he drew the panel for the petit jury and the grand jury there were 1402 names in the jury box (R. 65).

Johnson denied that he excluded any one because of race, religion or class. In the past twenty five years he had written to churches of various religions, labor unions, veteran organizations, women's clubs, Rotaries, Elks, Lions and Odd Fellows. He testified that some answered his letter and some did not. (R. 28).

The motion for the challenge to the array was denied.

Testimony introduced on behalf of the Prosecution.

Mae Frances Norwood testified that she is also known as Faye Jackson and Louise Young, and that she had been convicted previously of the crime of the possession of narcotics and had been placed on probation. She first met the defendant in a tavern and when she met him again a couple of weeks later at the same tavern, she decided to become his girl friend (R. 103). The circumstances relating to her first trip to Waynesville on January 31st are described by her as follows: "I was talking to some girl friends of mine, and they were going and they asked me did I want to go along with them." (R. 105) She called the defendant and told him she wanted to go with her girl friend, Joanne. (R. 107). She testified that defendant said, "'It is O.K. with me,' if I wanted to go." (R. 108) She told him she did not have any money to go and he told her to come over to his house and get it (R. 109). She then went to his apartment and he gave her fifteen dollars (R. 110). She and two women known as Joanne and Bertha

boarded a train at the Illinois Central Station in Chicago and went to St. Louis. They then took a bus to Waynesville where she went to a place known as the Cactus Club and engaged in acts of prostitution from which she earned $219.00. She returned to Chicago and gave the defendant $195.00 of this money. (R. 113).

The circumstances concerning her second visit to Waynesville on February 28, 1957 are again related by her own testimony: "Well, he just told me, at least we both were talking about it, going back to Waynesville because he said there wasn't any money in Chicago, and that was a nice time to go, and I didn't want to go by myself, and he gave me money to go." (R. 114) The defendant gave her $20.00 and she bought a ticket at the Illinois Central Station and left for St. Louis. When she arrived there, she met two women known as Frances and Jackie. The three of them were driven by an acquaintance of one of them to Waynesville where they went to the Cactus Club. Again, she committed acts of prostitution from which she earned $175.00. She returned to St. Louis and called the defendant and had the following conversation with him: "I talked to Mr. Smith and told him that I was sending my money home, that I didn't want to take it in the hotel with me, that we were going to stay over, and I didn't want to take the money in the hotel with me, and I was going to send it home." (R. 120) She then sent him $100 by Western Union with the message, "I love you always." The complainant then took a bus back to Waynesville but when she found the police were about, she returned to St. Louis and from there she returned by train to Chicago.

On cross examination, she admitted that she had asked the defendant for money to go to Detroit (R. 129). She admitted defendant told her he wanted her to stop being a prostitute. She also admitted that he told her that he

did not like prostitutes and that as a result they got into a fight. He threw a bottle at her which cut her face and she became mad at him (R. 159).

Frances Norwood was recalled the next day for further cross examination. She denied that she telephoned the defendant after court adjourned the previous day. She also denied that she told him she had been threatened that if she did not testify against the defendant she would be sent to jail for five years. The following testimony was given (R. 236):

"Q. Was there any conversation as to what would happen to you if you didn't testify against Mr. Smith?

A. Well, when I was arrested, they told me I was under arrest because I didn't let them know where I were.

Q. Did Mr. Parrish tell you what would happen to you if you didn't testify against Mr. Smith?

A. He told me that I would be in contempt of court, or something, or perjury, or something.

Q. Did that convey to you the thought that if you didn't testify against Mr. Smith, that you might go to jail?

A. It did.

By Mr. Bellows: That is all.

By the Court: Was anything said about perjury?

By the Witness: He said I could have gotten five years for perjury since I didn't let him know where I were, or that I was intending to leave town. (R. 237)

By Mr. Bellows:

Q. You mean to say Mr. Parrish told you that because you didn't appear as a witness, you could be sentenced for five years for perjury?

A. It was something like that, yes.

Q. That frightened you, didn't it?

A. It did." (R. 237)

The prosecution called four women, Francis Mae Shipp (R. 161), Joan Bigham (R. 175), Geneva Washington (R.

199) and Frances Hamilton (R. 219) as witnesses. They testified that they went from Chicago to Waynesville and committed acts of prostitution and that they either went with complainant from Chicago, Illinois, to Waynesville or that they saw her in St. Louis, Missouri, or at the Cactus Club in Waynesville, Missouri.

Joan Bigham testified that on January 30, 1957, she saw Faye Jackson make a telephone call and that afterward Faye Jackson and Bertha and she drove in a cab to a building located at 5100 Ellis Avenue; that Jackson went in there and returned minutes later (R. 179). The witnesses, Shipp (R. 161), Washington (R. 139) and Hamilton (R. 219), testified that Faye Jackson sent money by telegraph.

Thomas W. Parrish testified that he is a special agent for the Federal Bureau of Investigation; that he took the defendant into custody on March 20th, 1957, and informed him of the charge against him; and that the defendant denied the charge and also stated that he did not know anyone by the name of Louise Young (R. 227)

Parrish was recalled by the government. He testified that he did not at any time tell the complainant that if she did not testify she would be put in jail for perjury.

On cross examination the following testimony was given:

* * *

"Q. Did you tell her what the effect would be of her refusing to testify against Mr. Smith?

A. No, sir, I didn't. (R. 238)

* * *

Q. Mr. Parrish, she told you at various times she didn't want to testify against Mr. Smith, isn't that right?

A. I have to think. I don't want to make a mistake. (R. 242)

* * *

A. She had told me that she didn't want to appear in court, yes, sir. (R. 242)

Q. Didn't you then tell her if she didn't appear in court and testify against Smith that she could be held for contempt of court?

A. I have already answered that, no, I told her, if I may answer, that if she did appear in court and did not tell the truth, she could possibly be held, not for contempt, but perjury." (R. 242)

On redirect examination by the government, the following took place:

"Q. Mr. Parrish, would you tell us, please, exactly what you did tell her.

A. I told her that if she took the stand that she should tell the truth regarding her association with the defendant in this case, because if she did not tell the truth, she would be subject to possible perjury charges and possible contempt of court." (R. 244).

Testimony on behalf of the Defendant.

Grant Smith, the defendant, testified that he was born in Montgomery, Alabama, and that he is 39 years of age. He had schooling equivalent to the ninth grade. He had worked as delivery boy, laborer, elevator operator, had owned a tavern and is now managing a tavern. Smith met Frances Norwood in December, 1956, at the Pershing Lounge. He met her for the second time three weeks later at the same place. He did not know at that time that she was a prostitute. The victim told him she had lived in Detroit, was married and had children. She also told him that she had been in trouble in Detroit on a narcotics charge and was on probation and had to go to Detroit to report. She said she had missed reporting the month of December and she needed $150 to straighten out the probation and he gave her $100. She left and was gone about a week but he did not know that she had gone to Waynesville, Missouri. She called him and told him she was not in town and that she was going to send him his money (R. 255).

The defendant did not know when Frances Norwood first called him that she was calling from out of the city. He denied that he told her at any time to go to Waynesville, Missouri, for the purpose of engaging in prostitution (R. 257).

While she was away in March, a man from Detroit inquired about her at the Lounge and he learned from him that she was a prostitute (R. 258). A few days later Smith talked to her about it while they were in the Lounge and she at first denied that she was a prostitute (R. 260). They then went to her home and while they were drinking, she admitted that she was a prostitute. Smith told her that he did not like prostitutes and that there was no future with her. She became angry and threw a whiskey glass at him and he threw a bottle at her (R. 261). He did not see her again until he saw her in court.

The defendant testified that he was called by his boss and told that an FBI agent was at the Lounge inquiring about him and Smith told him that he would be there about 3:00 o'clock. When Parrish arrived Smith identified himself and was placed under arrest. When he inquired why he was arrested he was told that he sent some girl to Missouri. He denied the charge. Parrish referred to the girl as Faye Jackson or Louise Young. The defendant stated he did not know Frances Norwood by any other name (R. 263).

The defendant denied that he at any time persuaded, enticed, induced, coerced, or assisted in inducing, persuading, enticing or coercing Frances Norwood to go to Missouri for the purpose of engaging in prostitution.

The defendant further stated that on the evening before the day he testified, Faye Jackson had telephoned him and said that she was sorry that she had testified against him

but she had been told that if she did not testify as she had, she would have been imprisoned for five years (R. 262).

On cross examination, he testified that he is the manager of the Pershing Lounge. He stated that he received a Western Union money-order but did not know that it was sent from Missouri. He received the money order either the same day or a day after he received the telephone call. He thought that she had gone to Michigan because she told him she was going there. The long distance operator did not talk to him. When he picked up the phone he asked her when she got back and she told him she was not in town (R. 266). He had a fight with Frances Norwood and threw a bottle at her which cut her.

At the hearing on the motion for a new trial, counsel for the defendant presented an affidavit made by the victim to the effect that after she had a fight with the defendant during which she was hurt and was sent to a hospital; she falsely accused the defendant of the charge that he sent her out of town in order to get even with him; that she later had a change of heart and eluded a police detail; that she was arrested and brought to the county jail at Rockford; but she did not know what she was charged with; that the bond of $5000 was high, she was not permitted to see a lawyer, write or call; that the agents for the FBI told her that if she did not cooperate with them that she would be sent to jail; that he had given her money to go to Detroit to see her children, but instead she had gone to Waynesville, Missouri; that her conscience bothered her; and that she is aware of the consequence of having given false testimony on the witness stand; and that no one made her change her testimony.

Counsel for the defendant offered to call the witness Frances Norwood in support of the statements made in the affidavit, but the court was of the opinion it was unnecessary.

SUMMARY OF ARGUMENT.

I.

The Clerk of the United States District Court testified that fifty to sixty percent of the persons he selected for jury services were either recommended by previous jurors and postmasters or were volunteers. The balance were selected from lists of private organizations consisting of a list of parents of students of a parochial school, lists prepared by the clerk's secretary and a list of a parent-teacher association prepared by the clerk's wife. The method employed by the clerk in selecting the jurors constituted a complete disregard of the requisite standards for the selection of jurors.

Volunteers for jury service are incompetent to serve as jurors under the laws of Illinois. Therefore they are incompetent to serve as jurors in the Federal Court under the provisions of Title 28, U.S.C. section 1861 (4) which provides that a person is incompetent to serve as a juror in a court of the United States if he is incompetent to serve as a grand or petit juror by the law of the State in which the district court is held. The selection of jurors from lists of a few private organizations and those recommended by previous jurors, and in some cases by the United States Attorneys, deprived the defendant of being tried by a jury consisting of a true cross section of the population of this district. The selection of the jury by the means employed by the clerk violated the defendant's right to a fair and impartial jury guaranteed by the Sixth Amendment to the Constitution of the United States.

II.

The entire case against the defendant rests upon the testimony of the victim, an admitted prostitute, who had been previously convicted of a felony. She brought the charge that is the subject of this indictment after an altercation with the defendant in which she was cut by a whiskey bottle. When her conscience caused her to change her mind about testifying against him, she eluded a police detail. As a result of this she was arrested on a warrant charging her with being a material witness and she was confined in the county jail at Rockford, Illinois on a high bond of $5,000. She testified that while she was incarcerated there she was deprived of the right to communicate with a lawyer, write or make a telephone call. While in custody she was threatened by the agents of the F.B.I. if she did not cooperate with them.

She testified at the trial that she had made up her mind to go to Waynesville, Missouri and she called the defendant to tell him. He told her that if she wanted to go it was all right with him. Her testimony relating to the second trip to Waynesville, Missouri is to the effect that they both concluded it was a nice time to go to Waynesville, Missouri. There is absolutely no testimony that she was a prostitute for him nor is there any evidence that he persuaded or induced her to leave Chicago, Illinois and to go to Waynesville, Missouri. The evidence considered in a light most favorable to the government does not support a verdict of guilty.

III.

The United States Attorney failed to prove certain facts which he told the jury in his opening statement he would prove. He told the jury that the victim and the defendant

entered into an agreement whereby she would turn over her earnings from prostitution to him and in return he would provide for her wants. He also told the jury that the victim had given the defendant five thousand dollars of her earnings. None of these facts, as well as other assertions were proved at the trial. The United States Attorney in making these unproved statements, gave unsworn testimony which could not be erased from the jury's mind and thereby prejudiced the defendant's right to a fair trial.

IV.

The court erred in refusing to grant the defendant a new trial where it was shown by a sworn affidavit of the alleged victim that she committed perjury. The record in this case shows that within two days Frances Norwood came to counsel for defendant and told him that she had testified falsely. Counsel warned her of the possible consequences of her recantation and suggested she consult with her own attorney. A transcript of this conversation was given to the United States Attorney before the motion for a new trial.

Her recantation is understandable in view of the evidence that she had been held incommunicado at the Rockford County Jail for a number of months and had been subjected to pressure and threats by the FBI agents. When she was released and the influence was no longer brought to bear upon her, she renounced her testimony given at the trial at the earliest possible time.

CONTESTED ISSUES.

1. Whether the selection of the jury was such that it deprived the defendant of a trial by jury as guaranteed to him by the Sixth Amendment to the Constitution of the United States, where, at a hearing on a motion to challenge the array of the petit jurors, evidence was introduced that fifty to sixty percent of all petit jurors, selected by the Clerk of the United States District Court, were selected either on the recommendation of previous jurors and postmasters or were volunteers, and the rest were selected from a few private organizations.

2. Whether the evidence considered in a light most favorable to the government supports a verdict of guilty, where there is no evidence that the defendant persuaded, enticed, induced or coerced the victim to leave Chicago, Illinois, and go to Waynesville, Missouri, to commit acts of prostitution.

3. Whether the opening statement made by the United States Attorney containing matters which he stated he would prove, and did not, prejudiced the defendant's right to a fair and impartial trial.

4. Whether the court erred in refusing to grant the defendant a new trial where the victim's affidavit stated she gave material false testimony against the defendant.

PROPOSITIONS OF LAW RELIED UPON.

I.

The defendant was deprived of a jury selected from a truly representative group of the community as guaranteed to him by the Sixth Amendment to the Constitution of the United States because fifty to sixty percent of the jurors selected by the Clerk of the United States District Court were obtained from recommendations of previous jurors and postmasters or were volunteers and the balance were picked from a few particular private organizations.

Glasser v. United States, 315 U.S. 60.
United States v. Gordon, ... F. 2d ... (United States Court of Appeals for the Seventh Circuit, No. 11929, Opinion filed July 16, 1957).
Ballard v. United States, 329 U.S. 187.
Thiel v. *Southern Pacific Co.*, 328 U.S. 217.
Title 28, U.S.C. Secs. 1861-3-4.
Illinois Revised Statutes, 1955, Chap. 78, Sec. 1, 13.

II.

The evidence considered in a light most favorable to the government does not support a verdict of guilty where it appears from the record that the defendant did not persuade, induce, entice or coerce the victim to go from Chicago, Illinois to Waynesville, Missouri.

Welsch v. United States, 220 Fed. 764.
Batsell v. United States, 217 F. 2d 257.
U. S. v. Jamerson, 60 F. Supp. 281.
U. S. v. Mathison, 239 F. 2d 358.

III.

The United States Attorney in his opening statement prejudiced the jury against the defendant by relating facts which he did not prove in the trial of the case.

Minker v. *United States*, 85 F. 2d 425.

Manuel v. *United States*, 254 Fed. 272.

IV.

The court erred in refusing to grant the defendant a new trial where it was shown the government's witness committed perjury.

Martin v. *United States*, 17 F. 2d 973.

ARGUMENT.

I.

The defendant was deprived of a jury selected from a truly representative group of the community as guaranteed to him by the Sixth Amendment to the Constitution of the United States because fifty to sixty percent of the jurors selected by the Clerk of the United States District Court were obtained from recommendations of previous jurors and postmasters or were volunteers and the balance were picked from a few particular private organizations.

The affidavit in support of a motion challenging the array of the petit jurors stated (1) that 65% of the names of prospective jurors are obtained by recommendations of former jurors; (2) that Roy Johnson, Clerk of the United States District Court during the years 1954, 1955, 1956, did not address any communication to any person, corporation, or organization with reference to securing names of persons for jury service other than 3 churches and four small town postmasters; (3) that some of the prospective jurors whose names are deposited in the jury box were recommended by persons in the United States Attorneys office in this district; (4) that the array of petit jurors do not constitute a fair representative cross section of the community; (5) that the officials in charge of the jury selection procedure utilized methods in the selection of the petit jurors whereby they arbitrarily, intentionally or systematically excluded various classes of people who are eligible and qualified for general jury service; (6) that the officials in charge of the jury selection procedure of this court illegally and improperly delegated their duties in connection with the selection of the petit jurors; (7) that

the population of the Northern District of Illinois exceeds six million persons, but that since 1950 and at the present time, jury panels are selected from a list of prospective jurors never exceeding two thousand names. The government did not file an answer to this affidavit.

Roy Johnson was called as a witness by the defendant. He testified that fifty to sixty percent of all jurors he selected were either recommended by former jurors and postmasters, or were volunteers, and that the balance came from names furnished by friends in the building (obviously Federal Court Building), members of the United States Attorneys office, list of parents of students of a parochial school, lists given to him by his secretary, and, lists of members of parent teachers groups furnished by his wife (R. 49).

The testimony of Johnson shows an astonishing failure to keep adequate records concerning the selection of jurors. It was however shown that in 1956, the clerk communicated only with the pastors of three Negro churches and the postmasters of the district requesting them to furnish names of those desiring to serve as petit or grand jurors. During the year 1957 from January 1, 1957, to the date when the jurors were drawn for service for the month of June when this case was tried, the same procedure was followed as in the previous year. Only Negro organizations, mostly churches, were asked to send in names. Johnson said the jurors called in 1957 were selected in the same percentage as in 1956; that is 50 to 60% of the jurors were either recommended by other jurors or were volunteers. The limited field from which the clerk selected jurors is well demonstrated by Johnson's testimony that in 1956 he received forty to fifty names from Negro churches (R. 32), 100 to 200 names from postmasters (R. 36), 500 names recommended by other jurors (R. 37).

Although the clerk testified in response to questions asked of him by the court that in the past twenty five years he wrote to various organizations, not all such inquiries were answered (R. 28). The fact remains that in 1956 and 1957 he did not write to any organizations for names to be used for jury service. Furthermore we do not know when he made such requests or how many names he received. His testimony that he did not exclude any one because of race, religion or class is an unwarranted conclusion. The method by which he selected the jurors shows that he did in fact exclude from jury service the great majority of the population of the community.

The foregoing summary of the testimony given by the Clerk of the United States District Court shows an amazing disregard for the statutory requirements for the selection of jurors. Title 28, U.S.C. Sections 1861, 1863, 1864 provide the rules for the selection of jurors. These provisions provide that jurors selected must be competent to serve as a juror under the laws of the State in which the district court is held. In *Glasser* v. *U. S.*, 315 U.S. 60, 85, the court said:

> "Jurors in a federal court are to have the qualifications of those in the highest court of the State . . . the proper functioning of the jury system, and, indeed, our democracy itself, requires that the jury be a 'body truly representative of the community,' and not the organ of any special group or class."

The jurors selected as volunteers were not competent to serve as jurors under the Statutes of Illinois. Chapter 78, Section 13 Illinois Revised Statutes provides that any person who seeks the position of a juror shall be deemed guilty of contempt and fined not exceeding twenty dollars.

Although the clerk in this district is a person of high integrity the method used by him to select jurors is

particularly evil in its possible effects. The selection of jurors by recommendation of previous jurors limits the choice of jurors from a little self-perpetuating group. In the hands of a clerk friendly to a litigant, the right to a fair and impartial jury is denied by the method of jury selection employed in this district. The selection by the clerk of jurors recommended by the personnel of the United States Attorneys office would procure a panel favoring the prosecution.

The startling disclosure by Johnson that in 1956 and 1957 he communicated with only three or four Negro churches and some postmasters in the district to obtain names for jury service, demonstrates the utter failure of the Clerk of the United States District Court to seek a group of jurors truly representative of the community. Forty per cent of the jurors were selected from a list of parents of pupils of a parochial school (R. 39), unidentified lists made by his secretary (R. 39), and lists of parent teachers groups furnished by his wife (R. 39). The selection of the jurors from recommendations of previous jurors, postmasters, volunteers and a few particular private organizations does not conform to the established concept of trial by jury.

In *Glasser* v. *U. S.*, 315 U.S. 60, 85, the court said:

> "*The deliberate selection of jurors from the membership of particular private organizations definitely does not conform to the traditional requirements of jury trial.* No matter how high-principled and imbued with a desire to inculcate public virtue such organizations may be, the dangers inherent in such a method of selection are the more real when the members of those organizations, from training or otherwise, acquire a bias in favor of the prosecution. The jury selected from the membership of such an organization is then not only the organ of a special class, but, in addition, it is also openly partisan. If such practices are to be

countenanced, the hard-won right of trial by jury becomes a thing of doubtful value, lacking one of the essential characteristics that have made it a cherished feature of our institutions."

The standards to be employed for the selection of jurors stated in the *Glasser* case were reiterated in *Thiel* v. *Southern Pacific Company*, 328 U.S. 217, and *Ballard* v. *U. S.*, 329 U.S. 187.

The use of lists of private organizations although condemned in the *Glasser* case has not been changed. It would thus appear that unless one belonged to a particular association favored by the clerk, or was recommended by a previous juror or postmaster, or volunteered for jury service, he would not be called. The clerk in following the methods we have called to the attention of this court excluded from jury service the overwhelming majority of the population.

II.

The evidence considered in a light most favorable to the government does not support a verdict of guilty where it appears from the record that the defendant did not persuade, induce, entice or coerce the victim to go from Chicago, Illinois to Waynesville, Missouri.

There is no probative evidence that the defendant persuaded, induced, enticed or coerced the complainant on two occasions to go from Chicago to Waynesville, Missouri. On January 31st, 1957, she decided to go to Missouri and merely called to tell the defendant of her intentions. He was perfectly indifferent to this and told her that if she wanted to go there it was all right with him.

Her testimony relating to her first journey to Waynesville, Missouri is as follows: "I was talking to some girl friends of mine, and they were going—and they asked me

did I want to go along with them and I said yes." (R. 105). She testified she called the defendant and the conversation was as follows, "I told him I wanted to go to Missouri with my girl friend, Joanne." (R. 107). He said, "'It is O.K. with me' if I wanted to go" (R. 108). The complainant testified that she told him she needed money to go there and he told her to come to his home and she went there and received twenty dollars.

The testimony of the complainant concerning the reason for her second trip also fails to sustain the charges contained in the second count. Her testimony concerning this trip is as follows: "We both were talking about it, going back down to Waynesville, because he said there wasn't any money in Chicago, and that was a nice time to go, and I didn't want to go by myself, and he said it would be all right for me to go by myself, and he give me money to go." (R. 114) Her explanation of the reason for her trip fails to satisfy the requirements of the provisions of the statute.

Evidence that the defendant received $100 on March 1, 1957 from the complainant's earnings from prostitution and $195.00 from her earnings on the previous occasion, which the defendant denied, would not of itself sustain a judgment of conviction if the defendant did not persuade, induce, entice or coerce the victim to travel from Chicago, Illinois, to Waynesville, Missouri to engage in prostitution. The intention that the complainant shall engage in prostitution must take place before the interstate journey is concluded. *Batsell* v. *United States*, 217 F. 2d 257; *United States* v. *Jamerson*, 60 F. Supp. 281; *United States* v. *Mathison*, 239 F. 2d 358.

This is indeed a strange white slave case where the alleged victim admitted that the defendant told her he did not like prostitutes and that he tried to dissuade her from being one (R. 158). Her testimony against the defendant must

be examined in the light of the evidence which discloses that she was motivated by a desire for revenge in instigating the prosecution. When she no longer desired to testify to a story she concocted she was coerced by the FBI agent, Parrish, who frightened her with the threat that she could be charged with perjury.

The victim testified she was arrested because she did not tell the authorities where she was (R. 236) and was taken to the county jail at Rockford, Illinois on April 10, 1957 and kept in custody until she testified on June 10, 1957. (R. 233). The following testimony brought out by counsel for the defendant on cross examination and by the interrogation of the court shows the influence brought to bear on this irresponsible witness, who not only admitted being a prostitute but had been previously convicted of a felony for possession of narcotics. (R. 236):

"Q. Did Mr. Parrish tell you what would happen to you if you didn't testify against Mr. Smith, that you might go to jail?

"A. He told me that I would be in contempt of court, or something, or perjury, or something.

"Q. Did that convey to you the thought that if you didn't testify against Mr. Smith, that you might go to jail?

"A. It did."

* * *

"By the Court: Was anything said about perjury?

"By the Witness: He said I could have gotten five years for perjury since I didn't let him know where (R. 237) I were, or that I was intending to leave town.

"By Mr. Bellows:

"Q. You mean to say Mr. Parrish told you that because you didn't appear as a witness, you could be sentenced for five years for perjury?

"A. It was something like that, yes.

"Q. That frightened you, didn't it?

"A. It did."

The following testimony of Parrish substantiates our view that he improperly influenced the witness.

R. 242

"By Mr. Bellows:

"Q. Didn't you then tell her if she didn't appear in court and testify against Smith that she could be held for contempt of court?

"A. I have already answered that, no. I told her, if I may answer, that if she did appear in court and did not tell the truth, she could possibly be held, not for contempt of court, but perjury.

R. 243

"By Mr. Connelly: (On Redirect Examination.)

"Q. Mr. Parrish, would you tell us, please, exactly what you did tell her?

• • •

R. 244

"By the Witness:

"A. I told her that if she took the stand that she should tell the truth regarding her association with the defendant in this case, because if she did not tell the truth, she would be subject to possible perjury charges and possible contempt of court."

We submit that it was not within the scope of the official duties of Parrish to implant in the mind of the witness that she could be charged with perjury, where there was no indication that she intended to testify falsely. The testimony of Parrish is not at all satisfactory. At one time he testified that he merely warned her of perjury and not of contempt (R. 243) and at another time he admitted that he warned her that she could be charged with perjury and contempt if she did not testify to the truth (R. 244).

The defendant testified that he is the manager of the Pershing Lounge, a tavern. He met the victim for the first time in December, 1956 at the Lounge. He met her again three weeks later at the same place. She told him

that she had lived in Detroit and that she was married and had children, and that she was attending a modeling school (R. 250). She also told him she had been in trouble in Detroit and had to go there every month to report. She told him she needed $150.00 to straighten out her probation but he only gave her $100.00 (R. 253). He saw her two weeks later and she said she was going to Detroit. While she was gone she called him by phone and told him she was not in town but she was going to send him some money. He did not know from where the money was sent. He denied that he sent her to Waynesville, Missouri to engage in prostitution. In March while she was away, he met some one from Detroit and learned that she was a prostitute (R. 259). When she returned he questioned her about it. At first she denied that she was a prostitute and then she finally admitted it. He told her that he did not like prostitutes and that he saw no future with her (R. 261). An argument followed in which she threw a whiskey glass at him and he threw a bottle at her, cutting her. She said she would get even with him. The defendant denied that he ever persuaded, induced, enticed or coerced the complainant to go to Waynesville, Missouri (R. 263).

The recantation of the victim supports our contention that the defendant was the victim of false testimony given by a woman, admittedly a prostitute and previously convicted of a felony, who was seeking revenge for being injured in an altercation. While it may be true that a witness may be influenced into recantation of testimony previously given, the circumstances in our present case indicates strongly that she gave false testimony at the trial because she was frightened by the threats of Parrish.

She was kept in the Rockford Jail on warrant as a material witness from April 15th to June 10th. The bond was too high for her to make and she was not permitted to call, write or obtain a lawyer. (R. 79). Although Parrish

testified he told her they were keeping her there for her own good, she was released immediately after she testified. (R. 233). The victim testified that she was told by Parrish that if she did not testify she would get five years for perjury, and that she was frightened as a result of that (R. 155). Her testimony on that matter is corroborated by Parrish, the FBI agent, who testified that he warned her if she did not tell the truth she could be punished for perjury and contempt. (R. 163).

Within two days after the return of the verdict, the complainant came to office of counsel for the defendant and told him she gave false testimony at the trial. Counsel informed her that if she testified falsely she could be punished and advised her to consult with her lawyer. Thereafter, the complainant consulted a lawyer and made an affidavit to the effect that she had a fight with Grant Smith and he hurt her and she went to the Cook County Hospital; that while there agents of the FBI visited her and she falsely told them that she had been a prostitute for Grant Smith and that he had sent her out of town; that she made the statement because she was angry with him and wanted to get even; that she had a change of heart after making the statement and she eluded the police detail; that on April 15th she was arrested and brought to Rockford, Illinois, and placed in jail under a $5,000 bond; that she did not know what she was charged with; that she was not permitted to see a lawyer, write or call; that the agents of the FBI told her how much time she would get if she did not cooperate with them; that the statements she made against Grant Smith were not true; that he had given her money to go to Detroit to see her children, and instead she went to Waynesville, Missouri; that she has been bothered by her conscience and that no one has talked to her to change her testimony and that she is aware of the consequences of lying on the witness stand.

Even if the court were to exclude from consideration the affidavit of recantation in determining the weight of the evidence, there is nothing in the words or conduct of the defendant which resembles that persuasion and inducement which constitutes a violation of the provisions of the statute. The conduct of the defendant was plainly one of indifference as to whether or not the victim went to Waynesville, Missouri. In *Welsch* v. *United States*, 220 Fed. 764, the court stated the test as to the sufficiency of the evidence in a prosecution under this statute is as follows:

> "To justify his conviction we think it was necessary to show that except for his express desire and inducement she would not have made the journey."

III.

The United States Attorney in his opening statement prejudiced the jury against the defendant by relating facts which he did not prove in the trial of the case.

It is our contention that the United States Attorney committed prejudicial error in making an opening statement wherein he informed the jury that he would prove certain facts, but failed to introduce any evidence concerning those matters.

The following unproved assertions were made:

> "The defendant and she decided that she would go to work for Mr. Smith, that she would turn over her earnings of prostitution, prostitution earnings to Mr. Smith in exchange for which he would furnish her with an apartment and clothes, and all the necessaries she might need." (R. 90).
>
> "The evidence will further show during the course of this relationship between Faye Jackson and the defendant extending from the late summer of 1956 until about March of this year, that she turned over to

him earnings in the amount of approximately $5000.00" (R. 90).

"She made a telephone call from that restaurant and talked to the defendant and asked his permission to go. The evidence will show that he told her she might as well go down there because she wasn't making any money here, and that to come by his house and he would give her the train fare."

"The evidence will further show that he talked on the phone at that time, at the same time, to another one of the girls who had told her about this good business down in Waynesville, Missouri." (R. 91).

"The government expects further that the evidence will show that on or about February 28th the defendant and the victim Faye Jackson, had another conversation in which he told her it was about time to go back to Waynesville, since it was the end of the month and soldiers were going to get paid, that this time she should stay three days, and that if she stayed three days she could come back with $600.00" (R. 93).

"The evidence will further show that Miss Jackson, she called Chicago on long distance and talked to the defendant. The defendant told her she had better send the money home, at least some of it, because it was not safe to leave it around the hotel room; someone might break into the hotel room and take the money." (R. 95).

The prosecutor had interviewed the victim several times (R. 133, 134) and should have known that she would not testify to the facts that we have hereinabove set forth. He did not show that he was taken by surprise by the failure of the victim to relate the matters he said he would prove. Had the witness given testimony different from what he expected he would have made an effort to bring out those facts by refreshing her recollection.

There was no evidence in the record that the defendant and the victim agreed that she would go to work for him

and turn over her earnings as a prostitute to him. There was no evidence in the record that she would turn over her earnings from prostitution in exchange for which he would furnish her with an apartment and clothes and all the necessaries she might need. There was no evidence that she turned over five thousand dollars to him as her earnings. There was no evidence that he told her that she wasn't making any money here and she might as well go to Waynesville. There was no evidence that he talked to one of the girls on the phone at the same time. There was no evidence in the case that he told her on or about February 28th, that if she stayed three days in Waynesville she could come back with six hundred dollars. There is no evidence that the defendant told her on the telephone to send the money back home.

The jury in this case could not easily forget the statements made by the prosecutor. Having heard it, it was before them for consideration in passing judgment on the defendant. The average juror has a great deal of respect and confidence in the United States Attorney and consequently when the jury is informed of evidence he intends to prove, they are apt to consider the statements as proven. Jurors untrained in the law are not likely to discern a distinction between statements made by the United States Attorney relating to evidence he intended to introduce and the actual evidence admitted at the trial. Consequently, what the government was lacking in evidence, was supplied by the United States Attorney in his opening statement.

It is often said and often forgotten that the duty of a prosecuting attorney is not to convict a defendant but to try him fairly. The prosecutor should hold himself to the highest practicable standard of fairness. In this case he failed to do so by relating facts to the jury in the

opening statement that he should have known he would not be able to prove. An improper and prejudicial opening address by the United States Attorney may justify a reversal of the judgment of conviction. *Minker* v. *United States*, 85 F. (2d) 425; *Manuel* v. *United States*, 254 F. 272.

IV.

The court erred in refusing to grant the defendant a new trial where it was shown that the government's witness committed perjury.

At the hearing on the motion for a new trial, counsel presented an affidavit made by Frances Norwood in the presence of her attorney to the effect that she testified falsely at the trial that the defendant sent her to Waynesville, Missouri (R. 79, 80). Counsel offered to call Frances Norwood to testify concerning her affidavit but the court refused to hear her stating, "I assume she would say the same thing if she were on the stand." (R. 374). The circumstances surrounding the making of this affidavit show clearly that the witness made it voluntarily. She came to counsel for defendant within two days after the verdict and informed him she testified falsely at the trial. He informed her that the consequences of such recantation might result in her being charged with perjury or contempt of court and suggested she see her own counsel (R. 374). She went to an attorney, Matt Moran and in the presence of two witnesses made the affidavit. In view of her sworn affidavit in which she admitted that she testified falsely, the court erred in not granting the defendant a new trial.

In *Martin* v. *United States*, 17 F. 2d 973, the court said:

> "In our opinion it is the duty of a trial court to grant a new trial, where a witness at the original trial

subsequently admits on oath that he committed perjury, or even that he was mistaken in his testimony, provided such testimony related to a material issue, and was not merely cumulative. *Bussey* v. *State*, 69 Ark. 545, 64 S.W. 268; *State* v. *Mounkes*, 91 Kan. 653, 138 P. 410, 51 L.R.A. (N.S.) 286."

CONCLUSION.

Wherefore, for the above and foregoing reasons, it is respectfully submitted that the judgment and conviction of the defendant, Grant W. Smith, be reversed.

CHARLES A. BELLOWS
AND
JASON ERNEST BELLOWS
Attorneys for Defendant-Appellant.

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Appellant's Appendix

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 57 CR 212) • •

PREFIX TO RECORD PURSUANT TO RULE 12(c) OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

1. Names of Parties:
   United States of America, plaintiff-appellee Grant W. Smith, defendant-appellant
2. Date of Filing of Indictment:
   March 28, 1957
3. Date of Issuance of Bench Warrant:
   March 28, 1957
4. Date of filing of Bench Warrant Returned Executed:
   April 26, 1957
5. Date of filing of Appearance Bond in sum of $5,000:
   April 30, 1957
6. Date of Commencement of Trial:
   June 10, 1957
7. Name of Judge Presiding:
   Honorable John P. Barnes
8. Verdict of Jury:
   We, the Jury, find the defendant, Grant W. Smith, guilty as charged in the indictment.
9. Date Sentence Imposed:
   June 27, 1957

10. Date of filing of Appeal Bond in sum of $5,000:
June 27, 1957

11. Date of filing of Notice of Appeal:
June 28, 1957

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 57 CR 212) * *

CRIMINAL DOCKET.

3-28-57 Filed Indictment

3-28-57 Bench warrant to issue and bond fixed at $5,000.00 —Barnes, J.

3-28-57 Issued bench warrant with copy of Indictment att.

4-22-57 Filed Affidavit.

4-22-57 Order bench warrant to issue for Louise Young, also known as Faye Jackson, a material witness in the above cause.—Draft—Barnes, J.
Mld ntcs. 4-23-57 (U.S. Atty.)

4-22-57 Issued B.W. to U. S. Marshal.

4-26-57 Order bond for material witness Faye Jackson, also known as Louise Young, is fixed at $5,000.00. —Barnes, J.
Mld ntcs. 4-29-57 (U.S. Atty.)

4-26-57 Filed B.W. ret'd. executed.

4-30-57 Filed Appearance Bond—$5,000.00

4-30-57 Deft with counsel waives reading of indictment & pleads not guilty. Cause set for trial June 10, 1957. Head of call.—Barnes, J.
Mld ntcs. 5-1-57 (U.S. Atty.)

5- 1-57 Filed B.W. retd executed.

5-20-57 Filed three (3) Subpoenas retd served.

5-20-57 Filed Subpoena Duces Tecum retd served.

5-31-57 Filed Subpoena retd served.—1 service

6- 3-57 Filed Appearance of Deft & Attys.

6-10-57 Filed 2 subpoenas retd served

6-10-57 Filed Notice and Affidavit

6-10-57 Cause called for trial. Motion of Chas. A. Bellows, Atty for deft, challenging the array of petit jurors is disallowed. Jury selected and sworn. Two alternates. On motion deft witnesses excluded. Opening statement hrd for Govt. Deft waives opening statement. Evidence heard in part for Govt. On motion Govt Louis Young, also known as Faye Jackson, a material witness in above cause is discharged from custody. Further evidence heard for Govt. Jury to separate until June 11, 1957 at 10:30 A.M.—Barnes, J.
Mld ntes 6-11-57

6-11-57 Filed Verdict

6-11-57 Further evidence hrd for Govt & Govt rests. Motion of deft for a judg. of acquittal at close of Govt's case is denied. Evid hrd for deft and deft rests. Govt rests. Both sides rest. Motion of deft for a judg of acquittal at close of all the evid is denied. Final argmts hrd and concluded. Court instructs the jury. Marshals sworn. Alternate jurors No. 1 and 2 discharged from further service in this cause. Jury retires to consider of its verdict. Jury returns verdict in open Court. Verdict read. Deft waives polling of jury. Enter

verdict: "We, the Jury, find the deft Grant W. Smith guilty as charged in the indictment." Cause continued to June 21, 1957 at 10 A.M. for hearing on motion for new trial and for dispsn. Deft's present bond to stand—Barnes, J.
Mld ntcs 6-11-57

6-11-57 Filed Instructions to Jury.

6-12-57 Filed Three (3) Witness Attendance Certificates.

6- 3-57 Fld appearance of Attorneys for deft.

6-13-57 Filed Subpoena retd unexecuted.

6-14-57 Filed Motion for a new trial

6-21-57 On mot deft ord cs contd for hrg on mot for a new tr & dispn to June 27, 1957 at 10 A.M.—Barnes, J.
Mld ntcs. 6-26-57 (Attys. & U.S. Atty.)

6-21-57 Clerk's File Copy of Transcript of Proceedings had before Judge Barnes (prior to Opening of the Trial of said cs) on June 10, 1957 filed by Official Court Reporter.

6-21-57 Clerk's File Copy of Transcript of Proceedings had before Judge Barnes on June 10, 1957 filed by Official Court Reporter.

6-27-57 Filed Supplementary Motions for new trial with Affidavit in Support

6-27-57 Arguments heard and concluded. Order motion for a new trial and supplementary motion for a new trial overruled and denied. Order defendant committed for 5 years on count 1 and defendant committed for 5 years on count 2, said sentences

to run concurrently—On motion defendant bail pending appeal fixed at $5000.00—Draft—Barnes, J.

Mailed notice to Attys. 6-28-57

6-27-57 Issued c.c. of order and comm. and copy to U.S. Marshal

6-27-57 Filed Appeal Bond $5,000.00

6-28-57 Filed Notice of Appeal of Defendant

6-28-57 Mailed copy of notice of appeal to U.S. Atty., U.S. Marshal and copy with statement of docket entries to U.S.C.A., 7th Circuit

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 57 CR 212) * *

The March 1957 Grand Jury charges:

That on or about January 31, 1957, in the City of Chicago, in the Northern District of Illinois, Eastern Division,

Grant W. Smith,

defendant, knowingly persuaded, induced, enticed and coerced a woman, to wit, one Mae Frances Young, also known as Faye Jackson, to go from Chicago, Illinois to Waynesville, Missouri, for the purpose of prostitution, debauchery and other immoral purpose, and thereby knowingly caused said woman to go and to be carried and transported as a passenger upon a common carrier in interstate commerce, to wit, from Chicago, Illinois to Waynesville, Missouri; in violation of Section 2422, Title 18, United States Code.

COUNT TWO.

The March 1957 Grand Jury further charges:

That on or about February 28, 1957, in the City of Chicago, in the Northern District of Illinois, Eastern Division,

Grant W. Smith,

defendant, knowingly persuaded, induced, enticed and coerced a woman, to wit, one Mae Frances Young, also known as Faye Jackson, to go from Chicago, Illinois to Waynesville, Missouri, for the purpose of prostitution, debauchery and other immoral purpose, and thereby knowingly caused said woman to go and to be carried and transported as a passenger upon a common carrier in interstate commerce, to wit, from Chicago, Illinois to Waynesville, Missouri: in violation of Section 2422, Title 18, United States Code.

A True Bill:

.....

Foreman

.....

United States Attorney

DAC:ms

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 57 CR 212) * *

AFFIDAVIT OF CHARLES A. BELLOWS IN SUPPORT OF MOTION CHALLENGING THE ARRAY OF PETIT JURORS.

Charles A. Bellows being first duly sworn, deposes and says as follows:

1. That he is the attorney for defendant, Grant W. Smith, and duly authorized agent of said defendant in this behalf.

2. That he was counsel in a certain case formerly pending in this district entitled United States of America *vs.* Daniel Considine, et al., number 54 CR 585, and that as such counsel he participated in a hearing relating to a motion to challenge the array of the petit jury in which Roy H. Johnson, Clerk of this Court and *ex-officio* Jury Commissioner for the Northern District of Illinois, testified in relation to the jury selection procedures in said district, and that the said witness on that occasion testified to the following matters:

(a) That during the years 1954, 1955 and 1956, said witness did not address any communications to any person, corporation or organization with reference to jury service other than three (3) churches and four (4) small town postmasters.

(b) That during the years 1950 to 1957 said witness obtained only eight short lists of prospective jurors, containing in all not less than 1000 names, and that the only other sources of prospective jurors during that period were former jurors, persons recommended by former jurors and volunteers.

(c) That during the period from 1942 to 1957, said witness has never overhauled the jury box from which jury panels are selected, and that said witness is unable to state definitely that there are no cards for prospective jurors in the jury box as much as fifteen years old since the box has never been emptied during that period.

(d) That the said witness was unable to state whether lists of prospective jurors as much as twenty years old were still in use in his office.

(e) That upwards of 50% of the names of prospective jurors are obtained by the said witness from membership lists of private organizations selected by the said witness and that 75% of said membership lists currently in use are in excess of seven years old.

(f) That some of the prospective jurors whose names are deposited in the jury box were recommended by persons in the United States Attorney's office in this district.

(g) That upwards of 65% of the names of prospective jurors are obtained by recommendations of former jurors, which former jurors were solely selected under a system of accepting recommendations from the officers of certain selected private organizations.

(h) That other than accepting the names of volunteers and using membership lists hereinabove referred to, the said witness during the period 1942 to 1957, utilized no method whereby he could obtain the names of prospective jurors who had not previously served as juror or been recommended by persons who had so served.

(i) That all prospective jurors fill out questionnaires and that the names of those of the prospective jurors who are to be placed in the jury box are selected by the said witness on the basis of information contained in those questionnaires according to the discretion of the person who is to deposit those names in the jury box.

(j) That said witness was unable to state the age of the oldest questionnaire completed by a prospective juror in his files.

(k) That the system of selecting prospective jurors in this district has continued unchanged since 1924.

3. That a hearing on this motion will disclose the following:

(a) The array of petit jurors do not constitute a fair and representative cross section of the community.

(b) The officials in charge of the jury selection procedures of this court utilized methods in the selection of the petit jurors whereby they arbitrarily, intentionally or systematically excluded various classes of people residing

within the jurisdiction of this court who are eligible and qualified for general jury service.

(c) The officials in charge of the jury selection procedures of this court utilized methods in the selection of the petit jurors whereby discrimination was practiced against various classes of people who are eligible and qualified for general jury service.

(d) The officials in charge of the jury selection procedures of this court illegally and improperly delegated their duties in connection with the selection of the petit jurors.

(e) That by virtue of the jury selection procedures now employed in the Northern District of Illinois, there is exercised a systematic and arbitrary exclusion of all persons not members of certain favored private organizations.

(f) That the population of the Northern District of Illinois exceeds six million (6,000,000) persons, but that since 1950 and at the present time, jury panels are selected from a list of prospective jurors never exceeding two thousand (2,000) names.

(g) That no effort is made by the Jury Commissioners of the Northern District of Illinois to select jurors from any list thoroughly representative of the total population of the said district, such as, telephone directories, voter lists or the like, but that rather effort is simply to retain the services of the same small group of juries augmenting their number when necessary by names of persons submitted by previous jurors and the officers of certain favored private organizations.

(h) That the jury selection procedures of the Northern District of Illinois have not, in any respect, changed or been modified since the decision of the Supreme Court of the United States in the case of Glasser vs. United States, 315 U.S. 60, 86 L. Ed. 680, (1941)

4. That affiant believes that if granted a hearing in reference to the jury selection procedures in this district, he can produce other and further evidence in support of the motion to challenge the array of the petit jurors, and that upon a hearing on said motion to challenge the array this court will sustain this motion.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 57 CR 212) * *

This cause coming on for hearing on the defendant's motion for a new trial and for disposition comes the United States by the United States Attorney comes also the defendant in his own proper person and by his counsel and the Court having heard the arguments of counsel and being fully advised in the premises it is

ORDERED that the defendant's motion for a new trial and his supplementary motion for a new trial be and they are hereby overruled and denied and the defendant being asked by the Court if he has anything to say why sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

ORDERED AND ADJUDGED by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered herein that the defendant Grant W. Smith be and he is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a period of Five (5) Years on Count 1 of the Indictment and that he be and is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a period of Five (5) Years on Count 2 of said Indictment, that said sentences shall run concurrently and on motion of the defendant it is

ORDERED that bail pending appeal be and the same is hereby fixed at Five Thousand Dollars ($5,000.00).

John P. Barnes
United States District Judge

June 27, 1957.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 57 CR 212) * *

NOTICE OF APPEAL

Name and Address of Appellant:
Grant W. Smith
5100 South Ellis Avenue
Chicago, Illinois

Name and Address of Appellant's Attorneys
Charles A. Bellows
and
Jason Ernest Bellows
10 South La Salle Street
Chicago 3, Illinois

Offense:
Violation of Section 2422,
Title 18, United States Code

Judgment of guilty and order denying motion for new trial entered June 27, 1957, appellant sentenced to the custody of the Attorney General for a term of five years.

Grant W. Smith, Appellant, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the above-stated judgment.

Dated: June 28, 1957.

Grant W. Smith
Appellant
By Charles A. Bellows
and
Jason Ernest Bellows
Attorneys for Appellant

RECEIVED copy of above Notice of Appeal this 28th day of June, 1957.

By Robert Tieken
United States Attorney

ABSTRACT OF THE EVIDENCE

Testimony given at the hearing on the motion for the challenge to the array of the petit jurors.

Roy Johnson, Clerk of the United States District Court, testified at the hearing on the motion challenging the array of the petit jury. The other jury commissioner, Harry Crooks, was ill and did not testify. Johnson testified that he and Crooks placed in the jury box an equal number of names of prospective jurors (R. 40). During the year, 1956, the only requests he made for names was directed to three or four negro churches and some postmasters of the district (R. 24). He received forty or fifty names from the negro churches (R. 30), one hundred to two hundred names from the postmasters (R. 36), and perhaps five hundred names of persons recommended by previous jurors (R. 37). He also obtained names from a list of St. Kilian Society brought in by a deputy clerk, a list of parents of pupils in a parochial school, lists given to him by his secretary, and lists furnished by his wife of parent teachers associations (R. 49).

Johnson testified that he received several thousand questionnaires during the year, 1956, but did not know exactly how many. In 1956, there were deposited in the jury box 1934 names. On April 8, 1957, and on May 8, 1957, there were deposited 450 and 514 names respectively. At the time he drew the panel for the petit jurors for the month of June, he also drew the grand jury panel. There were only 1402 names in the box at the time he made the drawings in June.

Johnson further testified that fifty to sixty per cent of all jurors names be deposited in the jury box were taken

from names recommended by other jurors or by friends, people around the building, and volunteers (R. 51, 52). He testified that three jurors were recommended by the members of the United States Attorneys office, two of them during 1957 (R. 52, 53).

Johnson testified that in 1957, he employed the same means to select jurors. He wrote to more negro organizations, mostly churches. The jurors selected to serve for the month of June were drawn on May 15, 1957, and they came from the same source that he had described for the year, 1956. He did not write to churches containing white membership (R. 60). He did not know whether he wrote to any postmasters for names from January 1st 1957 to May 15th, 1957. The names of jurors drawn to serve for the month of June, 1957, were drawn from the names he had deposited as his half of the total number (R. 62). Fifty to sixty per cent of the names he deposited were persons recommended by other jurors and volunteers.

On cross examination, he testified that he did not systematically or intentionally exclude any economic, social, religious, racial, political, or geographical group. He did say, however, that he did not have sufficient clerical help to take names from polling lists and directories (R. 66A).

Roy Johnson, under the questioning of the court, testified that over the past twenty five years, as Clerk of the United States District Court, he had written to Catholic, Jewish and Protestant Churches, labor unions, veteran organizations, parent teacher associations, women's clubs, rotaries, Lions, Elks and Odd Fellows. He has always written to postmasters in the outlying counties. He had also written to officers of labor unions. When he was asked whether he had received answers, he made the following reply:

"Well, over the years I have had answers from some of all of those organizations. That is, some of the labor unions, some of the pastors answered. There are some who don't answer. I don't write again. I write once, and if they don't answer, that is it, except the Chicago Urban League. I have written to them several times.

He testified also that he did not exclude any religious sect, race or class as regards wealth or education.

The Court, at the conclusion of the hearing, overruled the motion challenging the array.

TESTIMONY INTRODUCED ON BEHALF OF THE PROSECUTION.

98 Mae Frances Norwood testified that she is aiso known as Faye Jackson and Louise Young, and that she had been convicted previously of the crime of possession of narcotics and had been placed on probation for a period of two years. She met the defendant several months ago at the Pershing Hotel. She testified that a couple of weeks later they met again at which time she decided to
103 be his girl friend. The defendant asked her who her boy friend was and she replied she did not have one. They had some drinks together. She testified that it happened a long time ago and she did not recall exactly what they said to each other. She became his girl friend for four or five months. She testified that on January 30, she took a trip to Waynesville, Missouri. She was asked by the prosecutor how she happened to go to Missouri. The
105 witness replied, "I was talking to some girl friends of mine, and they were going and they asked me did I want to go along with them". (R. 105) She called the defendant and told him she wanted to go to Missouri with her girl friend, Joanne (R. 107). The defendant said, "It is O.K. with me," if she wanted to go. (R. 108).
109 The witness told him she did not have any money to go and he told her to come over to his house and get it (R. 109). She went to his apartment and he gave her fifteen dollars (R. 110). The witness and two other women known as Joanne and Bertha boarded a train at the Illinois Central Station in Chicago and went to St. Louis (R. 110). They then took a bus to Waynesville where she went to a place known as the Cactus club. That night she com-

mitted acts of prostitution from which she earned $219.00. She returned to Chicago the next day and gave the defendant $195.00 of this money (R. 113).

113 On February 27, 1957, she had a conversation with the defendant as follows: "Well, he just told me, at least we both were talking about it, going back down to Waynesville, because he said there wasn't any money in Chicago, and that was a nice time to go, and I didn't want to go by 114 myself, and he said it would be all right for me to go by myself, and he give me money to go." (R. 114). The defendant gave her $20.00 and she bought a ticket at the Illinois Central Railroad Station and left for St. Louis at 11:30 P.M. When she arrived there the next morning, she went to the bus station and found she missed the bus. She met Bertha and another woman and went to a tavern and had some drinks. Some acquaintances of Bertha drove them to Waynesville and again they went to the Cactus club where she met two women, Frances and Jackie. The witness committed acts of prostitution from which she earned $175.00. She returned to St. Louis and called the defendant on the phone and related the following conversation: "I talked to Mr. Smith and told him that I was sending my money home, that I didn't want to take it in the hotel with me, that we were going to stay over, and I didn't want to take the money in the hotel with me, and I was going to send it home. She sent him $100 with the 120 message "I love you always." (R. 120). She and two women companions, Joanne and Jackie, took a taxicab to Waynesville. Something had occurred and the police were about so they returned to St. Louis and took an Illinois Central train to Chicago. Upon her return, she spoke to the defendant in her apartment. She was asked what each said and she said, "Well, we just talked on a number of things. I can't tell just what all we did say." (R. 124) When asked again if she recalled any of the conversation, she testified, "We talked about what happened down there. I told him what had happened, and we were talking about

things wasn't as nice as before when I went." When asked again if she could recall anything else of the conversation, she said, "I don't."

126 On cross examination, she testified that her conviction for a felony occurred in Detroit, Michigan. She admitted she had asked the defendant for money to go to Detroit. (R. 129). When she met the defendant at the Pershing Lounge she had been drinking. She testified that the defendant tried to stop her from being a prostitute (R. 149) and asked her to become a shop lifter, (R. 151) and that as a result of that they had a fight (R. 151). At the time he told her that he wanted her to stop being a prostitute, they were both drinking at the Pershing Lounge. She said that she might have had as much as 20 drinks and that she was "high" and intoxicated. They then went to her apartment and he sent out for liquor. They got into a fight when the defendant told her he didn't like a prostitute, and he threw a bottle at her which cut her face. She admitted that she was mad at him (R. 159).

161 Francis Mae Shipp testified that she is a prostitute; that she met Faye Jackson at the Cactus Club on February 28, 1957; (R. 163) that she and Faye Jackson returned by bus to St. Louis where she sent a money order (R. 165).

175 Joan Bigham testified that she had been previously convicted of a felony, is a prostitute and that she knows Faye Jackson; that she did not know the defendant personally; (R. 176) that she saw Faye Jackson on or about January 30, 1957, at the Clover Club in Chicago; that another woman by the name of Bertha was there; that she saw Faye Jackson make a telephone call; that they then left in a cab and went to a building located at 5100 Ellis Avenue (R. 178) where Faye Jackson entered and returned ten minutes later; that they boarded a train at Illinois Central Station bound for St. Louis (R. 181).

When they arrived there they took a bus to Waynesville, Missouri, where they went to the Cactus Club and committed acts of prostitution (R. 185). The next day she returned to Chicago. On February 27, 1957, she went to St. Louis on the Illinois Central with Frances Shipp, Frances Hamilton and Jackie Phillips (R. 187). From St. Louis they went : Waynesville, Missouri by bus. She engaged that night in acts of prostitution at the Cactus Club. (R. 189). They returned to Chicago the next day.

199 Geneva Washington also known as Jackie Phillips testified that she is a prostitute. On February 27, 1957, she took the Illinois Central train to St. Louis. On the train she met Joanne, Frances Shipp and Frances Hamilton. After they arrived in St. Louis they took a bus to Waynesville, Missouri, and went to the Cactus Club where she met Faye Jackson, otherwise known as Louise Young (R. 201). When she finished work that night, she went back to Waynesville and there met Faye Jackson. They took a bus back to St. Louis. She saw Faye Jackson send a money order for $100 (R. 204). They went back to Waynesville by cab. After they finished work they went back to St. Louis and took a train back to Chicago. She testified she had been convicted of shoplifting.

214 By stipulation it was agreed that a Western Union Money Order dated March 1, 1957, issued to Grant Smith in the sum of $100 was telegraphed from St. Louis, Missouri, on March 1st, 1957, and was received by, endorsed by and deposited by the defendant, Grant Smith (R. 213, 214).

219 Frances Hamilton, otherwise known as Holliday, testified that she is a prostitute; that she met Faye Jackson on March 1st on a bus going from Waynesville to St. Louis; (R. 220) that on the bus were Jackie Phillips and Frances Shipp. When they arrived in St. Louis, Faye

Jackson sent a telegram and handed the Clerk some money; (R. 221) that they returned to the Cactus Club at Waynesville and engaged in acts of prostitution; and that evening they took the train back to Chicago (R. 224).

226 Thomas W. Parrish, a special agent for the Federal Bureau of Investigation testified that he arrested the defendant who denied the charge and said he did not know anyone by the name of Jackson or Louise Young (R. 227).

230 Frances Norwood also known as Faye Jackson or Louise Young, was recalled for further cross examination. She testified that she did not call the defendant after court adjourned to tell him that she had been threatened that if she did not testify against the defendant she would be sent to jail for five years (R. 233). At first, she denied that she had been discharged from custody (R. 233). Then she admitted that an order was entered discharging her from custody. She said she was arrested because she did not let them know where she was. She testified that Mr. Parrish told her that if she did not testify against the defendant she would be in contempt of court, or something, or perjury (R. 236). She thought Mr. Parrish meant that she might go to jail if she did not testify against the defendant (R. 236).

236 The court interrogated the witness as follows:

Was anything said about perjury?

Witness: He said I could have gotten five years for perjury since I didn't let him know where I were, or that I was intending to leave town.

Counsel then asked the following questions:

237 Q. You mean to say Mr. Parrish told you that because you didn't appear as a witness, you could be sentenced for five years for perjury.

A. It was something like that, yes.

Q. That frightened you, didn't it?

A. It did.

237 Thomas W. Parrish was recalled as a witness by the government. He denied that he told Faye Jackson that if she did not come in and testify against the defendant that she could be put in jail for five years or for any period.

On cross examination, the following took place:

238 Q. Didn't you tell Mrs. Norwood if she didn't testify, she would be held in contempt of court?

A. Let me think sir, please.

Q. Didn't you tell her that?

A. No, sir, I did not. Could I explain what I did tell her.

• • • •

242 Q. Mr. Parrish, she told you at various times she didn't want to testify against Mr. Smith, isn't that right? • • •

A. She had told me that she didn't want to appear in court, yes, sir.

Q. Didn't you then tell her if she didn't appear in court and testify against Smith that she could be held for contempt of court?

A. I have already answered that, no. I told if, if I may answer, that if she did appear in court and did not tell the truth, she could possibly be held, not for contempt of court, but perjury. (R. 242)

• • •

On redirect the following took place.

Q. Mr. Parrish, would you tell us, please, exactly what you did tell her?

244 A. I told her that if she took the stand that she should tell the truth regarding her association with the defendant in this case, because if she did not tell the

truth, she could be subject to possible perjury charges and possible contempt of court.

Thereupon the government rested its case.

246 Motion for judgment of acquittal denied.

Evidence introduced on behalf of the defendant.

247 Grant Smith testified that he is 39 years of age, born in Montgomery, Alabama, and had schooling up to ninth grade. Thereafter he worked as a delivery boy, laborer, elevator operator, and now is engaged in managing a tavern. He met Mrs. Norword in December, 1956, at the Pershing Lounge. (R. 249) He met her again three weeks later. She told him she had lived in Detroit and that she was married and had children. (R. 250) She told him at that time she was attending a modeling school. He did not know that she was a prostitute. (R. 250) After he met her she left and came back around the 20th of January. At that time she told him she had gotten into some trouble in Detroit and had to go there every month for probation report. (R. 251) She said that she had missed reporting for the month of December and that she needed $150 to straighten out her probation so she would not have to go to Detroit every month. (R. 253) He loaned her $100 on January 21st. He saw her about 2 weeks later at the Pershing Lounge. He did not know that she went to Waynesville, Missouri. She said she was going to Detroit. (R. 255) While she was gone she called him and told him she was out of town but she was going to send him some money. (R. 255) He did not know where the money came from until after he was arrested. (R. 255)

255 He further testified that his boss called him and told him that an FBI agent was out at his place and that he would return at 3:00 o'clock. The defendant went there to meet him at which time he was arrested (R. 256).

Before he received the money he received a call from Frances Norwood. She told him she was not in Chicago but she was going to send him his money. He denied that he received $195.00 from her. (R. 257) He denied that he told her at any time to go to Waynesville, Missouri, for the purpose of engaging in prostitution. (R. 257)

While she was away some one from Detroit inquired about her. He learned from him in March that she was a prostitute. (R. 258) Three days later when he saw her at the Lounge, he talked to her about it. At first she denied she was a prostitute, but later she admitted it. They had been drinking and they left the Lounge and went to her house. (R. 259) He told her he didn't like prostitutes and she threw a glass of whiskey at him. He threw a bottle back at her and she became very angry and said she was going to get even with him. (R. 261) He said he did not see her again until he saw her in court.

After court adjourned he received a call from her. She told him that she was sorry for what she did. That they told her they would give her five years if she didn't testify to what she had said. (R. 262)

He was called by his boss who told him that an FBI agent wanted to see him. He went to the Lounge and the agent came in and he walked over to him and asked him if
263 he was looking for him. The agent told him he was under arrest. He asked the agent for what and he replied that he had sent some girl to Missouri. Smith told the agent that he didn't send anybody to Missouri. The agent referred to her as Faye Jackson or Louise Young. He didn't know her by that name since the only name he knew her by was Frances Norwood until this time. (R. 263)

The defendant denied that he ever persuaded, enticed, induced or coerced or assisted in inducing or persuading or enticing or coercing Mrs. Norwood to go to Missouri for the purpose of engaging in prostitution. (R. 264)

264 On cross examination, the defendant testified that he lives with his mother at 5100 S. Ellis. That he is manager of the Pershing Lounge at a salary basis. He did not know that Government's Exhibit 2, a Western Union Money Order, came from Missouri. He did not remember exactly whether he received the money order on the same day he received the telephone call or a day after. He did not notice that it stated that it was telegraphed from St. Louis, Missouri. He took it for granted that it came from Michigan because that was where he thought she went. When he received the telephone call, the operator did not talk to him. When he picked up the phone she was on the other end. He asked her when she got back and she said that she was not in town. When he picked up the phone he talked to Mrs. Norwood. He did not remember anyone saying "this is a long distance call" or "will you accept a call from St. Louis." He had an argument with Mrs.
266 Norwood and threw a bottle at her from which she suffered a cut. He did not know whether the cut required any stitches. He lives at 5100 Ellis, in the third apartment consisting of eight rooms. His mother and her husband, his nephew and a roomer by the name of Williams live there. There have been other roomers there at times. He had no other occupation than that of manager of the Pershing Lounge.

Motion for judgment of acquittal at the conclusion
271 of all the evidence in the case denied.

330 The charge of the Court

The Court's charge to the jury.

330 By The Court: Ladies and Gentlemen of the Jury:

It is the duty of the court to deliver to you instructions for your guidance in the consideration of the evidence and in your deliverations upon this case.

The instructions which the court will give you, insofar as they pertain to the principles of law applicable to this case, must be accepted by you as a binding control and guide in your consideration of the evidence and in your deliberations.

The responsibility rests upon you to determine the facts of this case, under the law as the court may give it to you, uninfluenced by any expression of opinion that the court has made or may hereafter make upon matters of fact. The court has not intended at any time during the trial of this case, and does not intend at any time, to express any opinion on any matter of fact, and if the court has expressed or does express any opinion on any matter of fact you are at liberty to disregard such opinion, in it is
331 your duty to disregard it, if it is different from your own opinion.

This is a criminal case, and the law in such cases is that a defendant comes into court presumed to be innocent, and that presumption protects him until such time, if such time shall come, when the jury shall believe from the evidence in the case, beyond a reasonable doubt, that the defendant is guilty as charged in the indictment.

The guilt of an accused is not to be inferred because the facts proven are consistent with his guilt, but, on the contrary, before there can be a verdict of guilty, you must believe from all the evidence, and beyond a reasonable doubt, that the facts proven are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt you should adopt the former.

The defendant on trial has pleaded not guilty. This puts the burden of proving the charges in the indictment upon the Government, and you cannot find the defendant guilty unless, from all the evidence, you believe him guilty of

the offense charged in this indictment beyond a reasonable doubt.

332 A reasonable doubt is what the term implies,—a doubt founded on reason. It does not mean every conceivable kind of doubt. It does not mean a doubt that may be purely imaginary or fanciful, or one that is merely captious or speculative. It means, simply, an honest doubt that appeals to reason and is founded upon reason. If, after considering all the evidence in the case, you have such a doubt in your mind as would cause you, or any other reasonably prudent person, to pause or hesitate before acting in a grave transaction in your own life, then you have such a doubt as the law contemplates as a reasonable doubt.

You are the sole judges of the credibility and weight which is to be given to the testimony of the witnesses who have testified upon this trial. In weighing the testimony of each witness you should carefully scrutinize the same; consider all the circumstances under which the witness testified; his demeanor on the stand; the relation which he bears to the Government or the defendant; the manner in which he might be affected by the verdict; the extent to which he is corroborated or contradicted by other credible evidence, and, in short, any circumstances that tend to throw light upon his credibility. And, applying these

333 tests which I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness.

Your verdict in this case must be reached from a consideration of all the evidence in the case, but if any evidence was admitted and was later stricken out you must wholly disregard such evidence as was stricken out.

During the trial of a law suit it often becomes the duty of counsel for the parties to object to questions, or to evidence, and I instruct you that you shall not take into

consideration against such party either such objections or the number of them, nor permit yourselves to be in any way influenced by such objections against the parties.

The fact that an indictment has been returned is not evidence; nor is the indictment evidence; and neither the indictment nor the return thereof should be considered by you as evidence in determining the guilt of the defendant. The indictment is not to be treated by you as raising any kind of presumption or creating any kind of prejudice
334 against the defendant. The indictment is simply the form or manner prescribed by law for preferring a charge against an individual, and must be regarded in that light, and in no other light.

The defendant has testified on the witness stand. You have heard his testimony. You should weigh the testimony of a defendant by the same rules that you would weigh the testimony of any other witness. But you should keep in mind that he is the defendant in the case and, of course, has a vital interest in the outcome of this trial.

One method of impeaching a witness is to show his previous conviction of a felony. You have heard evidence of the previous conviction of certain of the witnesses of felonies. You may, and it is your duty, to take that evidence into consideration in determining the credibility of such witnesses. However, the evidence of the conviction of such witnesses of felonies should not be considered by you in any other respect than as bearing upon the credibility of such witnesses' testimony.

The indictment in this case consists of two counts, each count charging the defendant Grant W. Smith with a separate and distinct crime.
335 Count One of the indictment charges that on or about January 31, 1957, in Chicago, Northern District of Illinois, the defendant Grant W. Smith, knowingly per-

suaded, induced, enticed and coerced a woman, to-wit, one Mae Frances Young, also known as Faye Jackson, to go from Chicago, Illinois, to Waynesville, Missouri, for the purpose of prostitution, debauchery and other immoral purpose, and thereby knowingly caused said woman to go and to be carried and transported as a passenger upon a common carrier in interstate commerce, to-wit, from Chicago, Illinois, to Waynesville, Missouri, in violation of Section 2422, Title 18 United States Code.

Count Two reads the same as Count One, except that in Count Two the date of the alleged crime is on or about February 28, 1957, whereas the date of the alleged crime in Count One is on or about January 31, 1957.

The statute of the United States upon which both counts of the indictment is based reads as follows:

> "Whoever knowingly persuades, induces, entices,
> 336 or coerces any woman ***** to go from one place to another in interstate ** commerce, ** for the purpose of prostitution or debauchery, or for any other immoral purpose *** and thereby knowingly causes such woman ** to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate ** commerce, ** shall be" punished.

The court instructs you that the term "interstate commerce" includes transportation from any state to any other state; and that the term "common carrier" as used in the statute just read to you may mean a railroad.

The court instructs the jury that the Government must prove beyond all reasonable doubt that the defendant induced, enticed and coerced one Mae Frances Young, also known as Faye Jackson, to go from Chicago, Illinois to Waynesville, Missouri, for the purpose of prostitution.

The court instructs the jury that if they find from the evidence that the said Mae Frances Young, also known as

Faye Jackson, went from Chicago, Illinois to Waynes-
337 ville, Missouri and engaged in prostitution in Waynesville, Missouri, and upon return to Chicago, Illinois gave part of the money she earned as a prostitute to the defendant, such evidence is not sufficient to find the defendant guilty if he did not persuade, induce, entice and coerce the said Mae Frances Young, also known as Faye Jackson, to go from Chicago, Illinois to Waynesville, Missouri.

The court instructs the jury that if they find from the evidence that the said Mae Frances Young, also known as Faye Jackson, went from Chicago, Illinois to Waynesville, Missouri without being persuaded, induced, enticed and coerced to do so, then the defendant must be acquitted.

Before you may find the defendant guilty on either count of this indictment you must believe from all the evidence and beyond a reasonable doubt that the defendant, on or about the date alleged in the court, knowingly persuaded, induced, enticed or persuaded the woman named in the indictment to go from Chicago, Illinois, to Waynesville, Missouri, in interstate commerce, that is from one State to another state, for the purpose of prostitution or debauchery, or for any other immoral purpose, and that he thereby knowingly caused such woman to go and to be carried or transported as a passenger upon the line
338 or route of a common carrier in interstate commerce.

You have only one duty to perform, and that duty is to tell the court whether or not this defendant is or is not guilty as charged in the indictment. Under no circumstances need you consider the matter of punishment. That is a matter committed to the attention of the court alone.

338A When you go to your jury room, ladies and gentlemen, you will take with you these instructions which I have just read to you and the exhibits which have been

offered and received in evidence and which properly go to the jury and which counsel will now assemble and hand to the Marshals, and also three forms of verdict, the first of which reads as follows:

> "We the jury find the defendant Grant W. Smith not guilty as charged in the indictment."

If you find the defendant not guilty on both counts, you will use this form which I have just read to you, twelve of you will sign the form and return it to the Court.

The second form of verdict which you will take with you reads as follows:

> "We the jury find the defendant Grant W. Smith guilty as charged in Count No. ... of the indictment, and not guilty as charged in Count No. ... of the indictment."

If you find the defendant guilty on one of the counts of the indictment and not guilty on the other, you will fill in these two blanks in this form which I have just read 339 to you and thereby indicate the count upon which you find the defendant guilty, and also the count upon which you find the defendant not guilty, and after the form correctly expresses your conclusions, the twelve of you will sign that form and return it with you into court.

The third form which you will take with you reads as follows:

> "We the jury find the defendant Grant W. Smith guilty as charged in the indictment."

If you find the defendant guilty on both counts of the indictment, the twelve of you will sign this third form which I have just read to you and return it with you into court.

I suggest, ladies and gentlemen, that when you first go to your jury room, you select some one of your number to serve as foreman or forewoman and to preside over your deliberations.

Thereafter the Jury returned the following verdict:

"We, the jury, find the defendant guilty as charged in the indictment."

Motion for a new trial made and continued to June 27, 1957.

On the motion for new trial, the following proceedings took place:

354 Mr. Bellows: Your Honor, since the return of the verdict in this case certain matters arose of which I have informed the United States Attorney. Within a day or two after the defendant was found guilty, I received a telephone call from my client that the victim in this case, Fay Jackson, or Mrs. Norwood, wanted to come in and talk to me. I said she could come in and see me.

I had a court stenographer present when she came in. She told me that she wanted to change her story. I asked her whether or not the testimony she gave to your Honor was false. She said part of it was not true.

I asked her what part of the testimony was not true, and she said that part in which she gave the inference that he sent her to Missouri. I told her that if she told the court that or she made an affidavit to that effect that your Honor might consider that to be perjury or contempt
355 of court. She said in that case she would like to consult with an attorney.

I said, "Very well," she could do as she liked. Sometime after that, your Honor, she consulted—talked to two lawyers and she made an affidavit to them. I have made that part of the motion for a new trial, the supplementary motion for a new trial, which I have attached as one of the grounds for a new trial.

Last Monday I spoke to Mr. McGarr. I told him of the situation. I thought it was only fair that the United States Attorney be acquainted with the change of heart of a witness, which always gives a court misgivings as to the man-

ner in which it was taken and the motive that might have caused the change in testimony.

I also talked to Mr. Connelly and told him of the witness' change of heart and asked him to communicate with her and find out if she were telling the truth or wasn't telling the truth at this time.

I have given all the information to the United States Attorney, including the transcript of testimony or
356 statement that she made to me in my office, your Honor. She is here in court today.

Of course, if she lied before your Honor, why, then, of course, I think your Honor would give a great deal of consideration in determining whether or not the defendant should be granted a new trial. She is here today.

The affidavit of Faye Jackson was presented which is as follows:

State of Illinois,
County of Cook—ss.

STATEMENT OF FAYE JACKSON
alias MAE FRANCIS NORWOOD

June 15, 1957

My name is Faye Jackson. I live presently at 643 W. 61st Street, Chicago, Illinois.

On Sunday, about March 17, 1956, Grant Smith and I had a fight in Washington Park sometime after midnight. I was angry with him because he had hurt me. I went to Cook County Hospital and the FBI came over that Monday. They told me I had went out of town for prostitutes and that I had sent money sent back by M. O.

I told them I had been a prostitute for Grant Smith and he had sent me out of town to Missouri. I was angry with Grant and I wanted to get even with him. I was in pain and my feelings were hurt. All the money I ever got from

most was money I had borrowed. I still owe him about $400 or $500. I had owed him over a thousand dollars.

On April 15th the FBI arrested me and took me to Rockford and put me in jail under a $5000 bond. I don't know what I was charged with. I was not permitted to see a lawyer or write or call or anything. I had had a change of heart after making the statement to the FBI which is why I skipped out on the police detail here in Chicago about April 1st right after I was released from the hospital on March 29th.

The F.B.I. told me how much time I would get if I didn't cooperate with them. They told me Grant was a vicious person and that they had heard he was going to kill me and that if I didn't go along with them something terrible would happen to me.

I appeared in Court as a witness against Grant Smith on June 10th in the U. S. Dist. Court here in Chicago the same day I was released from jail in Rockford. I came straight from jail in Rockford in custody of U. S. Marshall to the Court here.

I made statements against Grant that were not true in that I told the Court that Grant had sent me to Rockford for prostitution and that he had given me money to go to Detroit to see my children, but actually I didn't go to Detroit instead I went to Waynesville, Mo. Grant did give me money on 2 occasions to go see my children at the end of Jan. and Feb. of this year.

Ever since I so testified I have been bothered by my conscience to the point where I can't eat or sleep at night. No one has talked to me to try to get me to change my story. It's just me. I just know that I can't go on living and knowing that I have wronged that man in trying to send him to the penitentiary. I know what it all means lying on the witness stand but still it's me. I'll feel better knowing that I had told the truth anyway. I just had to come to talk to somebody.

I saw Atty. Matt Moran's picture in Jett with Grant and I knew he was connected with this case. When I got to trial in Court I didn't see Atty. Moran, and I didn't know any lawyer here so I contacted Atty. Moran and he referred me to you (meaning Atty. Theodore Howard).

I just made this statement in the presence of Atty. Matt Moran on June 15th, 1957, in the presence of Lawrence Owens and James I. McGill. I make it again without any alteration. I am under no threat or fear whatever but my conscience.

Faye Jackson

State of Illinois,
County of Cook—ss.

Faye Jackson, also known as Mae Francis Norwood, having been first duly sworn deposes and states that she has read and heard read the foregoing statement by her above subscribed and that the same is true in substance and in fact.

Faye Jackson

Subscribed and sworn to before me
this 15th day of June, 1957, A. D.
Helen Wallace
Notary Public

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374 Mr. Bellows: * * * I warned her and I told her that your Honor might punish her or that she could be punished if she lied by making a false affidavit or testifying in this case. She has consulted with attorneys. She still wants to make the same story, and she is here, and I would like to, with the permission of the Court, to call her and ask her—

By The Court: You put her affidavit in. I assume you regard that as sufficient when you filed it.

By Mr. Bellows: Yes, your Honor.

By The Court: I assume she would say the same thing if she were on the stand.

375 Thomas W. Parrish was called as a witness by the
376 government and testified that he talked to Faye Jackson. He stated that Faye Jackson did not make a statement that Grant Smith never sent her to Waynesville, Missouri. He did not tell Faye Jackson what she should say at the trial. He only told her she should tell the truth. He did not make the following statement to her, "But it is not fair. If somebody tried to knock your eye out, wouldn't you do whatever you could to see he was punished for it." He did not exhibit a telegram to Faye Jackson
377 while she was in the County Hospital. Faye Jackson was contacted three times at the County Hospital by the FBI.

Q. On page 6 of the statement given by the witness after trial to Mr. Bellows the question was asked:

"Why did you give a different impression when you testified or intend to give a different impression when you testified in court against him?

"A. They had me all frightened. They told me I am on probation in Detroit. They said they were going to
378 see I got some time out of it. I told them up at County, after they arrested me and took me to Rockford, the Rockford County Jail, I said I would not testify against Mr. Smith. I said what I was doing, I was doing it before I even knew him. He did not entice me into anything. What I did was because I wanted to do it. The money, I gave it to him, I gave it to him because I wanted to, not because he put any pressure on me, which he did not.

"He never asked me for any money. I just gave it to him to take care of me. I was frightened. That was the reason why. I thought I probably would get some time out of it. I had two people to see me. They said I would get time from it, probation.